



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 10447639

Date: JUL. 20, 2021

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a dentist/manager, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that she had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits a brief asserting that she is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
 - (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or

who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).¹ *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national’s contributions; and whether the national interest in the foreign national’s contributions is

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (NYSDOT).

² See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.³

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework.

Regarding her claim of eligibility under *Dhanasar*'s first prong, the Petitioner indicated that she intends to open a corporation that will "offer a full spectrum of dental services in [redacted] Florida." The Petitioner will be the "founder, owner, and General Manager of the business, managing the whole business operations." She will open an office and a "fully outfitted RV for underserved communities and senior living facilities." She also plans to open two dental clinics within a 5-year period, and "negotiate portable contracts with PPO and HMO dental insurers and complete the company's Medicaid contract within 3 months of opening." The Petitioner also stated that her company will use "low-cost and highly efficient techniques to provide affordable preventive dental services, which will make it possible for families and individuals with lower incomes to receive dental care." She also stated that the company will also provide education to the local community on preventative care, and "promote growth in the economy of Florida and the U.S. with the direct and indirect creation of jobs for location professionals." Further, she stated that there is a grave shortage of dental practitioners in the United States and Florida and the Petitioner's endeavor will "enhance societal welfare."

The record includes information about the shortage of dentists in the United States and the growing demand for dentists in Florida, and the healthcare needs for dental care. The record supports the Director's determination that the Petitioner's proposed work to operate a dental clinic has substantial merit.

In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead we focus on the "the specific endeavor that the foreign national proposes to undertake." See *Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* We also stated that "[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance." *Id.* at 890.

On appeal, the Petitioner contends that the "importance of healthcare and dental care, coupled with shortage of professionals in that field as well as an excess expenditure with people with dental problems helps one understand [sic] why [the Petitioner's] endeavor stands to produce benefits

³ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

beyond the company's prospective patients and employees." She contends that because her business will supply dentists in an area that is need of dental care, she helps the community through dental healthcare and job creation, and her proposed endeavor offers broader implications beyond her company's employees and clientele. The Petitioner further states that she "is availing herself to pursue her Dentist license in the U.S., as well as creating a business to employ other dentists," and that her undertaking stands to "fill the gap of thousands of unfilled jobs, one Dentist at a time." Additionally, the Petitioner asserts that her proposed endeavor "will create 9 direct jobs" and countless indirect jobs.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of her work. Although the Petitioner's statements reflect her intention to create and operate a dentist office and mobile dentist office, she has not offered sufficient information and evidence to demonstrate that the prospective impact of her proposed endeavor rises to the level of national importance. In *Dhanasar* we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Here, we find the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond her business and its clientele to impact her field, the healthcare industry, or the U.S. economy more broadly at a level commensurate with national importance.

In addition, the supporting evidence submitted does not sufficiently establish the claims of the Petitioner. Specifically, in reviewing the 2020 – 2025 business plan for [REDACTED] there are several areas that do not have supporting evidence to corroborate the business plan. The business plan indicated that the Petitioner's company will offer a full spectrum of dental services in [REDACTED] Florida. This business plan includes market analyses, information about the company and its services, financial forecasts and projections, an explanation about startup funding, and a description of company management and personnel. The business plan offers sales projections of \$1,254,481 in year one, \$2,180,352 in year two, and up to \$4,369,173 in year five. The Petitioner, however, does not adequately explain how these sales forecasts were calculated. The business plan stated that the company will be listed as "in-network" through the insurance company, and it will also accept Medicaid patients within the first year which will build the customer base. However, the business plan does not provide any evidence of how long the process will take to complete these agreements with Medicaid and the insurance providers. In addition, it does not appear that the Petitioner has her own client base to quickly support the first year of operations. Thus, it is hard to understand how the business plan reaches these large numbers of sales in a short period of time. Although the business plan stated that the demand for dentists is high in Florida, it is still not clear how the plan forecasted these sales for the Petitioner's new dental office.

Regarding future staffing, the Petitioner's business plan anticipates that [REDACTED] will start with a staff of 9 employees and increase to 20 employees by the third year. The payroll for year one is projected as \$533,700 and will increase to \$1,633,691 by the fifth year. Again, the business plan does not provide sufficient evidence as to how [REDACTED] can hire 9 employees within the first year as a new business with no office space, no established clients, and no finalized agreements with the insurance companies. Furthermore, the Petitioner has not demonstrated that the specific endeavor she proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Specifically, she has not shown that her company's future staffing levels and business activity stand to provide substantial economic benefits

in Florida or the United States. While the sales forecast for the company indicates that it has growth potential, it does not demonstrate that benefits to the regional or national economy resulting from the Petitioner's undertaking would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. In addition, although the Petitioner asserts that her company will hire U.S. employees, she has not offered sufficient evidence she would employ a significant population of workers in that area, or that her endeavor would offer the region or its population a substantial economic benefit through employment levels or business activity. Nor has the Petitioner demonstrated that the reduced healthcare costs attributable to her company's future dental services and dental prevention education stand to substantially affect Medicare and Medicaid savings in Florida or nationally.

The evidence in the record is also not sufficient with respect to startup funding. The business plan states on page 15 that the new business will "require approximately \$290,000 for startup outlays to ready a space for patients," and "increases in sales will finance additional personnel and the RV for outpatient outreach." The Petitioner asserts that the business plan stated that the initial setup can be done with only \$142,000. The Petitioner indicated that this project will be self-funded and she will invest personal funds until the business establishes income and credit. The Petitioner further indicated that she and her husband own two properties in Brazil that are valued high enough to cover the start-up funds necessary for the new U.S. business. However, upon review of the registration documents for the two properties in Brazil, it appears that one property is owned by [REDACTED]

[REDACTED] and the second property is owned by [REDACTED]. Thus, according to the submitted documents, it does not appear that the Petitioner or her husband own either apartment. In addition, there is no evidence that these apartments can be sold to fund the new U.S. dental office.

In addition, the Petitioner stated that she would consider investors to help fund the new office, and submitted two letters of intent from individuals that declare they are interested in investing money towards the Petitioner's business in exchange for a monetary capital interest. According to the two submitted letters, the investors would provide a combined amount of \$35,000.00 towards the investment into the U.S. company. However, the letters are only notices of intent and not actual agreements to invest in the U.S. company, and the amount of \$35,000 would not be sufficient to cover the forecasted start-up expenses.

The Petitioner must resolve these inconsistencies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.*

In addition, while the Petitioner offered information indicating that the United States faces a shortage of dentists, this reported shortage does not render the work of an individual dental services business nationally important under the *Dhanasar* framework. With respect to the Petitioner's intention to open a dental office to provide dental services, the U.S. Department of Labor addresses shortages of qualified workers through the labor certification process. Accordingly, a shortage alone does not demonstrate that waiving the requirement of a labor certification would benefit the United States. Here, the Petitioner has not shown that her proposed work stands to have wider implications in the field of dentistry or the U.S. healthcare industry. Her proposed work therefore does not meet the first prong of the *Dhanasar* framework.

Because the documentation in the record does not establish the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of her eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.